at a railroad crossing, evidence relating to the crossing of a wagon in front of a freight train more than 30 years before, as to the time it required a wagon and team different from that used by decedent to go over the track at the crossing, and as to the speed of another train, was inadmissible.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, § 1127.]

2. Same.—In an action against a railway company for injuries at a crossing, the question whether or not the company's right of way at or near the crossing had on it undergrowth which prevented the traveler from seeing the approaching train was material.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, § 1130.]

3. Appeal—Harmless Error—Exclusion of Evidence.—Where, in an action against a railway company for injuries at a crossing, a witness testified that he did not know the condition of the right of way at the time of the accident, and that when he went there five hours after the accident, which occurred at 5 p. m., it was dark, the refusal to permit the witness to state the condition of the right of way at the crossing five hours after the accident was not prejudicial; it being clear that the witness had stated that he did not know what the condition of the right of way was at the time.

4. Railroads—Accidents at Crossings—Contributory Negligence.—Where the proximate cause of a collision with a train at a crossing was the contributory negligence of the traveler, the question of the negligent management of the train was immaterial.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1020-1028.]

5. Same—Duty to Look and Listen.—It is the duty of a traveler on a highway to look and listen for the approach of trains before going on a railroad crossing, when his looking and listening would be necessarily effective.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Railroads, §§ 1043-1051.]

6. Same—Evidence—Sufficiency.—Evidence, in an action against a railway company for the death of a traveler in a collision with a train at a crossing, examined, and held to show that decedent was guilty of contributory negligence precluding a recovery.

SATTERFIELD *v.* COMMONWEALTH.

March 8, 1906.

[52 S. E. 979.]

1. Indictment—Allegation of Previous Convictions—Sufficiency.—An indictment for petit larceny alleged that accused had been twice before sentenced for a like offense and described the warrants issued

against him for the prior offenses, which charged that accused did unlawfully take, steal, and carry away certain property, without averring that the taking was felonious. Held, that the indictment showed prior convictions of petit larceny, under Va. Code 1904, § 3907, prescribing a punishment for one convicted of petit larceny after prior convictions of a like offense.

[Ed. Note.—For cases in point, see vol. 27, Cent. Dig. Indictment and Information, § 304.]

2. Same.—The procedure provided by Va. Code 1904, § 3907, declaring that when a person is convicted of petit larceny, and it is alleged in the indictment and founded by the jury that he has been before sentenced for a like offense, he shall be confined in jail not less than 30 days nor more than 1 year, etc., is cumulative, and leaves unimpaired the authority to prosecute an offender independently for successive offenses of petit larceny; and when that is done the punishment for the crime is unaffected by the fact that he may have been previously sentenced, and in such case the punishment is that prescribed by section 3707, and an indictment for the third offense of petit larceny is not bad because it alleges that accused was fined only for the second offense.

3. Same.—As courts will take judicial notice of the charter of the city of Danville and the jurisdiction which chapter 5, § 5, thereof, as amended by Acts 1895-96, p. 596, c. 562, confers on the mayor's court, an allegation in an indictment for petit larceny that accused, formerly convicted of a like offense in the mayor's court of Danville, had been convicted by a court of competent jurisdiction, was sufficient, without showing the fact that it had jurisdiction.

[Ed. Note.—For cases in point, see vol. 27, Cent. Dig. Indictment and Information, § 304.]

4. Same.—An indictment, alleging, for the purpose of subjecting accused to additional punishment, that he had been previously convicted of crime, is good for the crime charged, though the former conviction can not be shown.

[Ed. Note.—For cases in point, see vol. 27, Cent. Dig. Indictment and Information, § 307.]

5. Criminal Law—Verdict—Sufficiency.—Va. Code 1904, § 3907, provides that for a third offense of petit larceny accused shall be confined in the penitentiary not less than one year, nor more than two years. An indictment for larceny charged that accused had been twice before convicted of a like offense. The verdict was: "We * * * find the prisoner guilty as charged in the * * * indictment, and fix his punishment at one year in the state penitentiary." Held, that the verdict impliedly showed that the jury found that accused had been twice before convicted of a like offense, and was sufficient.